

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SUSAN OWENS-WOLKOWICZ	:	
Plaintiff,	:	CIVIL ACTION
	:	
vs.	:	NO. 05-CV-277
	:	
CORSOLUTIONS MEDICAL, INC.,	:	
HUMANA INSURANCE COMPANY,	:	
JEFFERSON PILOT FINANCIAL	:	
INSURANCE COMPANY, and	:	
CORSOLUTIONS EMPLOYEE WELFARE	:	
BENEFITS PLAN	:	
Defendants	:	
	:	
vs.	:	
	:	
UNUM LIFE INSURANCE COMPANY	:	
OF AMERICA	:	
Third-party defendant	:	

**MEMORANDUM AND ORDER**

**JOYNER, J.**

**August 10, 2005**

Third Party Defendant Unum Life Insurance Company of America ("Unum") has filed a Motion for Reconsideration of this Court's June 30, 2005 Order denying as moot Defendant Jefferson Pilot Financial Insurance Company's ("Jefferson") Motion for Summary Judgment as to Unum's Counterclaim. Specifically, Unum asks this Court to render judgment on the merits and deny the substantive arguments raised in Jefferson's Motion. For the reasons which follow, Unum's Motion shall be denied.

**Factual Background**

From 2002 through 2004, CorSolutions Medical, Inc. ("CorSolutions"), maintained short-term and long-term disability benefit programs for its employees. As a CorSolutions employee,

Plaintiff was a participant in the CorSolutions Employee Welfare Benefits Plan ("Plan"). Prior to January 1, 2003, Humana Insurance Company ("Humana") administered short-term disability claims under the Plan, and Unum handled long-term disability. As of January 1, 2003, Jefferson replaced Humana and Unum in dealing with both short-term and long-term disability claims.

In May 2002, Plaintiff became disabled due to a connective tissue illness. Plaintiff submitted a claim for short-term disability benefits to Humana, and Humana paid Plaintiff's claim until September 18, 2002. In a letter dated October 2, 2002, however, Humana terminated Plaintiff's benefits. After Jefferson replaced Humana, Plaintiff submitted her short-term disability claim to Jefferson. On June 2, 2003, however, Jefferson likewise denied Plaintiff's claim. Plaintiff then requested to submit additional medical information, and Jefferson agreed to reconsider Plaintiff's benefits claim after analyzing the supplementary medical evidence. On June 2, 2004, however, Jefferson informed Plaintiff that it would no longer handle her claim, as the disability arose in 2002 while Humana administered short-term disability claims. Jefferson further advised Plaintiff to submit her claim and medical information to Humana.

In August 2004, Plaintiff forwarded her medical records to Humana and requested clarification of its original denial of short-term disability benefits. Also in August 2004, Plaintiff requested a copy of Jefferson's administrative record. On August

30, 2004, Jefferson forwarded Plaintiff's file to CorSolutions and instructed Plaintiff to obtain her records from CorSolutions. On September 15, 2004, Humana informed Plaintiff that it would not fund her claim. Therefore, Plaintiff has not received further disability benefits.

On January 20, 2005, Plaintiff filed a Complaint against CorSolutions, Humana, Jefferson, and the Plan. Count I alleges that Plaintiff is entitled to both short-term and long-term disability benefits under the Plan, asserting that Defendants owe benefits pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1132(a)(1)(B). In Count II, Plaintiff alleges that Defendants breached fiduciary duties under ERISA, 29 U.S.C. §1132(a)(2) and (a)(3). In Count III, Plaintiff further alleges that CorSolutions, Humana, and Jefferson violated ERISA by interfering with her reception of benefits.

On March 3, 2005, Jefferson filed a Cross-claim against CorSolutions alleging that to the extent Plaintiff is entitled to short-term benefits, CorSolutions must indemnify Jefferson pursuant to an "Advice to Pay" Agreement. Also on March 3, Jefferson filed a Third-party complaint against Unum asserting that if Plaintiff proves long-term disability, Unum must provide such benefits. Importantly, Plaintiff's first application for long-term disability benefits did not occur until April 2005, when she filed a claim with Unum. Shortly thereafter, on April 28, 2005, Unum filed a Counterclaim to Jefferson's Third-party

complaint, seeking indemnification or contribution from Jefferson for its alleged breach of fiduciary duty in failing to notify Plaintiff of her ability to file a claim with Unum for long-term benefits. Specifically, Unum contends that Jefferson is liable to the extent that its breach of fiduciary duty hindered Unum's review of Plaintiff's untimely claim for long-term benefits.

By an Order dated June 30, 2005, this Court awarded summary judgment to Jefferson regarding all of Plaintiff's claims. In reaching that determination, we found that Jefferson was not a fiduciary under the short-term benefits program. Furthermore, we explained that even if Jefferson was a Plan fiduciary, its conduct did not constitute a breach of fiduciary duties. In another Order dated June 30, we denied as moot Jefferson's Motion for Summary Judgment as to Unum's Counterclaim, finding that all relevant factual issues had been resolved in this Court's Order granting Jefferson summary judgment regarding Plaintiff's claims. Now before this Court is Unum's Motion for Reconsideration, arguing that Jefferson's Motion for Summary Judgment as to Unum's Counterclaim should be denied on the merits, not denied as moot.

#### **Standards Governing A Motion for Reconsideration**

The purpose of a motion for reconsideration is to correct manifest errors of law or to present newly discovered evidence. Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); Frederick v. S.E. Pa. Transp. Auth., 926 F. Supp. 63, 64 (E.D. Pa. 1996). A party filing a motion for reconsideration must rely

on at least one of the following grounds: (1) the availability of new evidence that was not available when the court determined the initial motion; (2) an intervening change in the controlling law; or (3) the need to correct an error of law or to prevent manifest injustice. Hartford Fire Ins. Co. v. Huls Am., Inc., 921 F. Supp. 278, 279 (E.D. Pa. 1995); Prousi v. Cruisers Div. of KCS Intl., Inc., 1997 WL 793000 at \*3 (E.D. Pa. 1991). Absent one of these three grounds, it is improper for a party moving for reconsideration to "ask the Court to rethink what [it] had already thought through - rightly or wrongly." Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993). Moreover, where evidence is not newly discovered, a party may not submit that evidence in support of a motion for reconsideration. Harso, 779 F.2d at 909 (citing DeLong Corp. v. Raymond Intl., Inc., 622 F.2d 1135, 1139-40 (3d Cir. 1980)).

### **Discussion**

In applying the law governing motions for reconsideration to the case now before us, we find that Unum has failed to present new or newly discovered evidence to this Court. Likewise, Unum has not shown an intervening change in the controlling law nor persuaded this Court that we committed an error of law in issuing our June 30, 2005 Order. Rather, in moving for reconsideration, Unum merely reargues points raised in its response to Jefferson's Motion for Summary Judgment. Thus, this Court will not grant Unum's Motion for Reconsideration. We will, however, clarify and

elaborate upon the analysis used in reaching our decision to deny Jefferson's Motion for Summary Judgment as moot.

In our June 30 Order granting Jefferson summary judgment on all of Plaintiff's claims, we explained that Jefferson was not a fiduciary to CorSolutions' short-term disability program. In reaching that conclusion we noted that an "Advice to Pay" Agreement between Jefferson and CorSolutions explicitly stated that Jefferson was not a fiduciary as defined by ERISA. We further explained that even if Jefferson had acted as a Plan fiduciary, its conduct in no way breached fiduciary duties. In its Motion for Reconsideration, Unum argues that Jefferson acted as a fiduciary under CorSolutions' long-term disability program. Regardless of Jefferson's fiduciary status, this Court adheres to its prior reasoning in finding that CorSolutions in no way breached fiduciary duties. As Unum's Counterclaim is based upon Jefferson's alleged breach of fiduciary duties, this Court's previous determination that Jefferson did not breach fiduciary duties allegedly owed to Plaintiff renders the dispute between Unum and Jefferson moot.

The parties agree that Jefferson's sole contact with Plaintiff occurred when she resubmitted a claim for short-term disability benefits to Jefferson in 2003, although Humana had evaluated Plaintiff's claim and terminated her benefits in 2002. Moreover, the parties do not dispute that Jefferson responded to Plaintiff's renewed claim by allowing her to submit additional

medical information although the Plan's 180-day appeal period had expired. Finally, when Jefferson learned that Plaintiff's claim arose in 2002, it advised Plaintiff to submit her renewed short-term disability claim and additional medical documents to Humana. This Court has not been presented with any evidence indicating that Plaintiff submitted a claim to Jefferson for long-term disability benefits. Rather, Plaintiff first mentioned long-term benefits in her Complaint to this Court. In fact, Plaintiff did not submit an application for long-term benefits until April 2005, following a status conference before this Court. Moreover, Plaintiff submitted the long-term disability claim to Unum, who has agreed to consider Plaintiff's claim because the disability arose in 2002, before Jefferson handled long-term claims.

Unum provides no precedent indicating that Jefferson's conduct constituted a breach of fiduciary duty. ERISA Section 404 requires a fiduciary to discharge its duties in the following manner:

with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

29 U.S.C.A. §1104(a)(1)(B). Although Unum's response to Jefferson's Summary Judgment Motion cites In re Unisys Corp. Retiree Medical Benefit "ERISA" Litigation, 57 F.3d 1255 (3d Cir. 1995), the standard set forth in Unisys actually supports this Court's finding that Jefferson did not breach fiduciary duties.

See, Unisys, 57 F.3d at 1267-1268. In Unisys, the Third Circuit Court of Appeals held that retirees could sue their former employer for breach of fiduciary duty where the employer's representatives "actively misinformed" employees by "affirmatively representing" that benefits were guaranteed for life, when in fact the representatives "knew this was not true." Id. While the Unisys decision emphasizes the employer's awareness and purposeful deception, no evidence in this action indicates that Jefferson knew Plaintiff sought long-term benefits. Importantly, when Jefferson reviewed Plaintiff's claim, she had only applied for short-term benefits. Thus, Jefferson acted appropriately in referring Plaintiff to Humana to pursue her short-term benefits claim. As Plaintiff did not apply for long-term benefits, Jefferson had no reason to advise her to pursue a claim with Unum.

Furthermore, letters sent from Plaintiff's counsel to Jefferson refer to Plaintiff as solely seeking "short-term disability benefits." (Exhibits G, M, and N to Plaintiff's Complaint). As neither Plaintiff nor her counsel mentioned long-term benefits prior to the instigation of this lawsuit, Jefferson would have had no reason to instruct Plaintiff to contact Unum. In its Motion for Reconsideration, Unum attempts to prove that Jefferson knew Plaintiff sought long-term benefits by noting that a letter sent from Jefferson to Plaintiff's counsel included Jefferson's long-term disability policy number in the heading.



(Unum's Motion for Reconsideration, p. 4). Unum fails to mention, however, that in the body of the letter Jefferson explicitly states that its involvement solely concerns Plaintiff's "request for Short Term Disability benefits." (Exhibit D to Plaintiff's Complaint).

In sum, Unum asserts that the "actual controversy" before this Court is "the degree to which Jefferson Pilot's breach of its fiduciary duty has harmed Unum." (Unum's response to Jefferson's Motion for Summary Judgment, p. 13). By granting Jefferson's Motion for Summary Judgment concerning Plaintiff's Complaint, however, we previously found that Jefferson did not breach any fiduciary duty. As Unum's argument is premised upon its belief that Jefferson breached fiduciary duties to Plaintiff, this Court's prior determination that Jefferson committed no such breach renders Unum's Counterclaim moot. Accordingly, we shall deny Unum's Motion for Reconsideration.

An order follows.

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vs.	:	
	:	
UNUM LIFE INSURANCE COMPANY	:	
OF AMERICA	:	
Third-party defendant	:	

**ORDER**

AND NOW, this 10th day of August, 2005, upon consideration of Third Party Defendant Unum's Motion for Reconsideration (Doc. No. 37), and Defendant Jefferson's response thereto (Doc. No. 38), it is hereby ORDERED that the Motion is DENIED.

BY THE COURT:

s/J. Curtis Joyner  
J. CURTIS JOYNER, J.